evidence. Where a witness is testifying to a person's actions or appearance the courts rightly show considerable freedom in allowing him to state his conclusion after relating all the facts, if it is otherwise difficult to convey the real situation to the jury. *Redford* v. *Birley*, 1 St. Tr. N. S. 1071, 1134; *Commonwealth* v. *Dowdican*, 114 Mass. 257; *State* v. *Buchler*, 103 Mo. 203, 15 S. W. 331. See 3 WIGMORE, EVIDENCE, §§ 1924, 1962, 1974. But if the witness's opinion, rather than the subject of it, is the evidential fact, it should be admissible entirely apart from the opinion rule. See GA. CODE, 1911, § 5874. Thus other people's statements are admissible when themselves evidential and not merely evidence of what they relate. See *Bacon* v. *Towne*, 4 Cush. (Mass.) 217, 240. In the principal case, the defendant had to show both that he thought the deceased would shoot and that he thought so reasonably. *People* v. *Kennedy*, 159 N. Y. 346, 54 N. E. 51. See 1 BISHOP, CRIMINAL LAW, 8 ed., § 305; 13 HARV. L. REV. 223. What a disinterested bystander thought the deceased would do is at least slightly probative of the reasonableness of defendant's opinion, and would apparently fall under no excluding rule. Yet such evidence is usually not admitted under a plea of self-defense. *State* v. *Rhoads*, 29 Oh. St. 171; *Smith* v. *Commonwealth*, 113 Ky. 19, 67 S. W. 32; *Lowman* v. *State*, 109 Ga. 501, 34 S. E. 1019. *Contra*, *Thomas* v. *State*, 40 Tex. 36; *Cochran* v. *State*, 28 Tex. App. 422, 13 S. W. 651; see *Hawkins* v. *State*, 25 Ga. 207, 210. Though it would seem more reasonable to consider the evidence admissible, it may have been unwise for the court here to overrule the trial judge in his determination of the value of remotely relevant evidence, which depends so largely on discretion. See THAYER, PRELIMINARY TREATISE ON EVIDENCE, p. 516.

FEDERAL COURTS — JURISDICTION AND POWERS IN GENERAL — ENJOINING STATE PUBLIC SERVICE COMMISSION FROM ENFORCING STATUTE. — A statute of New Hampshire created a public service commission with power to promulgate and enforce rates and regulations, and provided that when the commission denied a rehearing there should be an appeal to the state supreme court. A railroad brought proceedings before the commission to test the constitutionality of a "mileage-book" statute which the commission was enforcing. It was held constitutional and a rehearing denied. Thereupon the railroad brings suit in the federal District Court to enjoin the enforcement of the statute by the commission. *Held*, that the proceedings will be held in abeyance until the railroad shall have exhausted its remedies before the state tribunals. *Boston & Maine R. Co.* v. *Niles*, 218 Fed. 944 (Dist. Ct., N. H.).

When the law deals with an administrative tribunal like this public service commission, with its combined legislative, executive, and judicial powers, its ordinary classifications necessarily break down. Proper results cannot be obtained without an analysis of the function being exercised in any given case. In determining their relations with state commissions of this sort, therefore, it is entirely proper that the federal courts should have made their interference depend upon the kind of action undertaken by the commission. The purely legislative matter of promulgating a rule or fixing a rate, it is clear that the federal courts will not enjoin. It has likewise been held that the federal courts will not interfere when the state legislative machinery is not yet exhausted because of the power of the state reviewing tribunal to substitute an order which it may deem proper. *Prentis* v. *Atlantic Coast Line Co.*, 211 U. S. 210. After the rule has been settled, however, and the legislative stage passed, there may be an injunction in a proper case even though the state law expressly provides for an appeal to the state courts to test the propriety of the action. *Bacon* v. *Rutland R. Co.*, 232 U. S. 134. To this extent at least the Supreme Court has recognized that a commission is not a "court" within § 256 of the Federal Judicial Code, which forbids an injunction against a state court except in bankruptcy cases. See *Prentis* v. *Atlantic Coast Line Co.*, *supra*; 36 STAT. AT

L. 1162. But when, as in the principal case, the only question raised before the commission is as to the constitutionality of a statute which it is enforcing, the action of the commission is purely judicial in its nature. Consequently an appearance before the commission on such a matter would be equivalent to going into a state court, and under the ordinary doctrines of comity the federal court would then properly refuse to entertain the petition until the remedies afforded by the state courts had been exhausted. *Peck* v. *Jenness*, 7 How. 612; see note to *Louisville Trust Co.* v. *Cincinnati*, 22 C. C. A. 359. The apparent inconsistency involved in denying that the commission is a court within the Judicial Code, and at the same time recognizing its judicial character for the purposes of comity when it passes on the validity of a statute, should offend no one. The difficulty is not substantial, and results merely from paucity of legal terminology.

ILLEGAL CONTRACTS — CONTRACTS AGAINST PUBLIC POLICY — CONTRACT TO WAIVE STATUTORY ABOLITION OF THE FELLOW SERVANT RULE. — State statutes abolished the fellow servant rule as applied to railroad employees, and substituted a rule of comparative negligence for the defense of contributory negligence. MISS. LAWS, 1908, c. 194; MISS. LAWS, 1910, c. 135. In his contract of employment the plaintiff assumed the risk of all injuries arising out of his own or a fellow servant's negligence. He was injured through his own negligence combined with that of a fellow employee. *Held*, that he may recover. *Illinois Central R. Co.* v. *Harris*, 67 So. 54 (Miss.).

A contract by which an employer is absolved from liability for negligent injury to his employees is generally held void as against public policy. *Little Rock & F. S. Ry. Co.* v. *Eubanks*, 48 Ark. 460, 3 S. W. 808; *Consolidated Coal Co.* v. *Lundak*, 196 Ill. 594, 63 N. E. 1079; *contra*, *Western & Atlantic R. Co.* v. *Bishop*, 50 Ga. 465. In England, however, a contract waiving the statutory abolition of the fellow servant rule is valid. *Griffiths* v. *Earl of Dudley*, 9 Q. B. D. 357. But in this country the contrary view prevails. *Atchison, T. & S. F. Ry. Co.* v. *Fronk*, 74 Kan. 519, 87 Pac. 698; *Tarbell* v. *Rutland R. Co.*, 73 Vt. 347, 51 Atl. 6. Similarly where the vice-principal doctrine is adopted, a contract waiving recovery for injury by a negligent vice-principal is invalid. *Lake Shore & M. S. Ry. Co.* v. *Spangler*, 44 Oh. St. 471, 8 N. E. 467; *cf. Little Miami R. Co.* v. *Stevens*, 20 Oh. 415. In general, wherever a statute regulating the relation of master and servant is reinforced by criminal penalties, a private agreement to waive its benefits would be clearly invalid. *Ten-Hour Law for Street Ry. Corporations*, 24 R. I. 603, 54 Atl. 602; *Short* v. *Bullion-Beck & Champion Mining Co.*, 20 Utah 20, 57 Pac. 720. *See Holden* v. *Hardy*, 169 U. S. 366, 397; 26 HARV. L. REV. 262. On the other hand, a contract to waive the benefits of a civil statute designed to protect only the parties to the contract will be enforced; but if the purpose of the statute was to benefit the public generally the waiver will be invalid. The view of the principal case that it is against the policy of the statute to allow it to be waived seems sound, and in accord with the principles usually followed in this country.

ILLEGAL CONTRACTS — CONTRACTS COLLATERALLY RELATED TO SOMETHING ILLEGAL OR IMMORAL — ACTION BY MONOPOLY ON CONTRACT LEGAL IN ITSELF. — In an action to recover the price of goods sold to the defendant, the latter alleged as a defense that the plaintiff was an illegal monopoly of all the glucose manufacturers in the United States; and that for the purpose of perpetuating its control of the market the plaintiff had devised a profit-sharing scheme whereby rebates were paid to all purchasers provided that during the year last preceding they had dealt only with the plaintiff; and that each contract denied the right of the purchaser to resell. *Held*, that the answer alleged no defense.